

COREY DASHAWN JONES,

Petitioner,

v.

DAVID ELLIOTT, Admin.,
Tyrrell Prison Work Farm,

Respondent.

In support of the motion to dismiss, respondent notes that Jones has not filed any motions for appropriate relief (“MAR”) or direct appeal of his conviction. Mem. Supp. Mot. Dismiss 1. Absent a valid excuse, a state prisoner must exhaust available remedies in state court before seeking federal habeas-corpus relief. See 28 U.S.C. § 2254(b). To satisfy the exhaustion requirement, the petitioner must fairly present his claims to the state court. See, e.g., Picard v. Connor, 404 U.S. 270, 275 (1971); Baker v. Corcoran, 220 F.3d 276, 288 (4th Cir. 2000). A claim is “fairly presented” if the petitioner presents to the state court the “substance of his federal habeas corpus claim,”

including “both the operative facts and the controlling legal principles.” Matthews v. Evatt, 105 F.3d 907, 911 (4th Cir. 1997) (quotations omitted). This exhaustion requirement compels a habeas petitioner to “invok[e] one complete round of the State’s established appellate review process.” O’Sullivan v. Boerckel, 526 U.S. 838, 845 (1999). In North Carolina, a petitioner may satisfy section 2254’s exhaustion requirement by directly appealing his conviction to the North Carolina Court of Appeals and then petitioning the North Carolina Supreme Court for discretionary review, or by filing a state post-conviction proceeding (such as a MAR) and petitioning the North Carolina Court of Appeals for a writ of certiorari. See N.C. Gen. Stat. § 7A-28(a) (“Decisions of the [North Carolina] Court of Appeals upon review of motions for appropriate relief . . . are final and not subject to further review in the [North Carolina] Supreme Court by appeal, motion, certification, writ, or otherwise.”); id. § 7A-31; id. § 15A-1422.

The court finds that dismissal without prejudice is appropriate. Jones may re-file his section 2254 petition if he so desires once he has exhausted his state court remedies.

In sum, respondent’s motion to dismiss [D.E. 9] is GRANTED. Petitioner’s application for habeas-corpus relief is DISMISSED WITHOUT PREJUDICE. The Clerk of Court is DIRECTED to close this case.

SO ORDERED. This 4 day of February 2011.


JAMES C. DEVER III
United States District Judge